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United States

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UNIVERSITY OF ALABAMA AT BIRMINGHAM
BOARD OF TRUSTEES, et al.,
Petitioners,

v.

PATRICIA GARRETT, et al.,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF *AMICUS CURIAE* OF PARALYZED VETERANS OF AMERICA, NATIONAL ORGANIZATION ON DISABILITY, NATIONAL MENTAL HEALTH ASSOCIATION AND NATIONAL ALLIANCE FOR THE MENTALLY ILL ON BEHALF OF RESPONDENTS

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I.
INTERESTS OF THE AMICI

The Paralyzed Veterans of America ("PVA") is a Congressionally chartered non-profit veterans service organization whose members are honorably discharged veterans of military service with spinal cord injury or dysfunction.[1] PVA has advocated for civil rights and equal opportunities for people with disabilities since its inception in 1947. PVA members, virtually all of whom use wheelchairs, are active citizens with a significant interest in full and equal access to state programs and services.

The National Organization on Disability ("N.O.D.") promotes the full and equal participation of America's 54 million men, women and children with disabilities in all aspects of life. N.O.D. was founded in 1982 at the conclusion of the United Nations International Year of Disabled Persons. Funded entirely by private sector contributions, N.O.D. is the only national disability network organization concerned with all disabilities, all age groups and all disability issues.

The National Mental Health Association, is a national organization with over 330 affiliates dedicated to promoting mental health, preventing mental disorders, and achieving victory over mental illness, as well as respect, dignity, and opportunities for persons with disabilities.

The National Alliance for the Mentally Ill, with more than 200,000 members and 1,200 state and local affiliates, is the nation's leading grassroots advocacy organization dedicated exclusively to improving the lives of persons with severe mental illnesses, including schizophrenia, bipolar disorder (manic-depressive illness), major depression, obsessive-compulsive disorder, and severe anxiety

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[1] This brief was written entirely by counsel for *amici*, and no counsel for any party had any role in authoring this brief. No monetary contributions were made by any outside parties to the preparation or submission of this brief. All parties have given written consent to the filing of this brief.

disorders.

II.
INTRODUCTION AND SUMMARY OF ARGUMENT

A little girl looks at photographs of children spread out in front of her and divides them into three piles: "They're girls, they're boys and they're handicaps."[2] A disability rights activist dressed in a business suit sits in a wheelchair at the airport awaiting her flight, while another businesswoman walks up and drops a quarter in her coffee cup.[3] A 17-year old mentally retarded girl has a baseball bat and a broom handle brutally rammed into her vagina by four high school football players in the affluent suburb of Glen Ridge, New Jersey, while nearly a dozen other students watch on and do nothing to stop it.[4] A 66-year old double amputee, perched atop a baggage cart "like a sack of potatoes," is wheeled onto a plane and left there for 45 minutes by airline personnel while other passengers stare at him; an airline representative then tells his daughter, "If he's that sick, he shouldn't be on a plane; he should be in a hospital."[5] Jerry Lewis, the long-time host of the Muscular Dystrophy Telethon, writes in a national magazine in 1990 that he would only be "half a person" if he had the disease.[6]

Those are not isolated or antiquated anecdotes drawn from the far outreaches of American society; they exemplify mainstream culture, and vividly illustrate that broad prejudices against persons with disabilities survive at the threshold of the new millennium. Voluminous scientific

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[2] Rupert Brown, *Prejudice: Its Social Psychology* 119 (1995), *quoting* Pam Maras, *The Integration of Children with Disabilities into the Mainstream* 140 (1993) (unpub. Ph.D. thesis, University of Kent (Canterbury, UK)).

[3] Joseph P. Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement* 19 (1994).

[4] Barbara Kantrowitz, *Verdict After a Day of Horror*, Newsweek, Mar. 29, 1993, at 27.

[5] *Airline Workers Manhandle, Abuse Handicapped Passenger*, L.A. Times, Jan. 15, 1989, at 3.

[6] Jerry Lewis, *If I Had Muscular Dystrophy*, Parade, Sept. 2, 1990, at 4, 5.

research shows that those prejudices, infecting both the public and private sectors of American society, determine the way "non-disabled" people view and act toward people with disabilities.

Many persons, however, still fail to recognize the pervasive and damaging nature of disability prejudice. Accordingly, in support of Respondents Ash and Garrett, *amici* respectfully submit this brief: (i) to examine the deep-seated psychological and sociological mechanisms that give rise to prejudice against persons with disabilities; and (ii) to demonstrate some of the ways in which those prejudices have had tangible and substantial adverse impacts on the lives of persons with disabilities.

The Americans with Disabilities Act's ("ADA") legislative history demonstrates the *fact* of discrimination against persons with disabilities - by both public and private actors. Persons with disabilities have been subjected to a long history of "purposeful unequal treatment"[7] in areas such as employment, marital and procreational rights, residency, education and health care. Some of the more extreme forms of discrimination - such as the mandatory sterilization and institutionalization laws enacted in the name of "scientific progress" at the height of the eugenics movement - now stand exposed as lamentable artifacts of irrational prejudices. Significant discrimination persists, however, often concealed beneath the same façade of rationality that camouflaged the blatant rights violations of the early 20th Century.

Responding to that continuing discrimination, Congress enacted the ADA. It relied upon a body of psychological and sociological research showing that a number of mechanisms cause people, consciously or unconsciously, to form negative attitudes toward persons with disabilities, based not upon verifiably different

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[7] *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973).

abilities, but upon myth.[8] Congress further understood that those who discriminate against persons with disabilities often characterize their conduct as an appropriate response to the very condition conferring minority status (*i.e.*, the individual's functional impairment). Accordingly, it required that adverse conduct against qualified persons with disabilities - whether committed by public or private actors - be shown to be based upon actual differences, rather than mere prejudices.

The psychological and sociological literature demonstrates that Congress's application of the ADA to the states was not only rational, but necessary. The concepts of "handicap" and "disability" do not exist *in vacuuo*; the significance of those labels derives from a person's physical and social environment. All Americans, including state actors, build and form that environment. All Americans, including state actors, are subject to the sociological mechanisms discussed herein, are susceptible to prejudicial attitudes, and are members of the society inhabited by persons with disabilities. Legislation intended to remedy and deter broad societal discrimination against persons with disabilities, therefore, necessarily must apply broadly to all American individuals and institutions, including the states.

III.
ARGUMENT

A. The Roots Of Societal Prejudice Against Persons With Disabilities

It is recognized in the fields of sociology and psychology that a variety of psychological and sociological mechanisms - including stereotyping, stigmatization, psychological discomfort, and paternalization - cause unimpaired individuals to hold prejudices against persons with disabilities. As shown below, while some or all of

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[8] U. S. Comm'n on Civil Rights, Accommodating the Spectrum of Individual Abilities 17, 25 (1983) (hereinafter "Accommodating the Spectrum").

these mechanisms also contribute to discrimination against other minority groups, their operation in the context of disability has unique characteristics that make disability prejudice extremely difficult to identify and eradicate.

1. Negative Stereotyping

Stereotyping - the belief that most or all members of a particular group share certain negative characteristics - underlies prejudice against persons with disabilities as well as racial, religious, ethnic and gender discrimination. However, while stereotyping of other minorities has become less acceptable since passage of the civil rights legislation of the 1960's and 1970's, stereotypes of persons with disabilities remain prevalent. For example, although few employers today likely would articulate a view that members of certain racial or ethnic minorities are not intelligent enough to hold some jobs, many freely express the view that people with disabilities display inordinate absenteeism, even though this stereotype has been thoroughly refuted by the empirical data.[9]

The persistence of disability stereotypes is attributable to the fact that, in contrast to race and ethnicity, which are generally recognized to bear no relation to an individual's abilities, the mere fact of having a disability is still believed to convey important information about a person's potential and limitations beyond the particular disability itself.

Of course, the existence of a disability is not wholly irrelevant to a person's capabilities. Any disability constitutes an impairment that imposes certain burdens and

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[9] *See, e.g.*, Jack R. Ellner & Henry E. Bender, *Hiring The Handicapped: An AMA Research Study* 46 (1980) ("Absenteeism is mistakenly assumed to be higher among handicapped employees"); George E. Stevens, *Exploding the Myths About Hiring the Handicapped*, Personnel, Dec. 1986, at 57, 58-60; (debunking various myths about employment performance of persons with disabilities, including claims of excessive absenteeism).

restrictions on an individual's life activities.[10] The perception of *disabilities* as negative limitations, however, often irrationally leads to negative attitudes towards *those persons who have them*, because "[p]eople tend to think in terms of a handicapped person rather than a person who is handicapped. It is imagined or perceived that [the disability] is the central life experience of that person and influences *all* his other mental and social abilities."[11]

For many people, the myriad characteristics by which one judges a non-disabled person – integrity, responsibility, sense of humor, amiability, sensitivity, to name just a few – suddenly recede into the background when the person has a disability. Instead, a single attribute comes to the fore: "an uncommon characteristic is chosen as the most significant feature. This deviant characteristic becomes the focus of attention, and most reactions can then be phrased in terms of that single feature."[12]

When a person's entire being is thus reduced to what is perceived to be a negative characteristic – her physical or mental impairment – attitudes about the individual's capabilities in other areas also tend to become negative. This effect has been described as the "spread" phenomenon.

> [t]he nondisabled tend to create consistently and on the whole usually negative

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10 *See* 42 U.S.C. § 12102(2)(A) (1995) (defining "disability" for purposes of the ADA as a physical or mental impairment that substantially limits one or more major life activities).

11 Duane F. Stroman, *The Awakening Minorities: The Physically Handicapped* 52 (1982) (emphasis added).

12 Myron G. Eisenberg, *Disability as Stigma, in Disabled People as Second-Class Citizens* 3, 5 (Myron G. Eisenberg et al. eds., 1982); *see also* Constantina Safilios-Rothschild, *The Sociology and Social Psychology of Disability and Rehabilitation* 111 (1970) ("most of the time the disabled are discriminated against by the nondisabled because the assessment stops at the recognition of the presence of the disability. This process of stereotyping and using stereotypes as guidelines for behavior simplifies interaction for the nondisabled when they encounter disabled persons, but often leads to the unjust treatment of the latter").

> impressions about the disabled person, who is then necessarily viewed as inferior in terms of all possible attributes simply on the basis of his visible or known but nonvisible disability.[13]

A number of empirical studies have demonstrated "spread" at work in influencing the attitudes of the unimpaired toward persons with disabilities. People mistakenly link epilepsy to physical unattractiveness.[14] They shout at the blind as if they are deaf and try to lift them as if they are orthopedically disabled.[15] They erroneously assume that persons with physical disabilities are mentally impaired,[16] and that persons with psychiatric conditions are violent.[17] They speak to persons with physical disabilities as if they were children.[18] In short, merely from knowledge of the existence of one impairment,

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[13] Safilios-Rothschild, *supra*, at 123; *see also* Beatrice A. Wright, *Physical Disability: A Psychological Approach* 32-39 (Kathy Robinson & Eleanor Castellano eds., 2d ed. 1983) (discussing "spread" phenomenon).

[14] Robert O. Hansson & Beverly J. Duffield, *Physical Attractiveness and the Attribution of Epilepsy*, 99 J. Soc. Psychol. 233, 233-40 (1976).

[15] Alan G. Gowman, *The War Blind in American Social Structure* 198 (1957).

[16] Wright, *supra*, at 35.

[17] *Compare, e.g.*, Bruce G. Link et al., *The Social Rejection of Former Mental Patients: Understanding Why Labels Matter*, 92 Am. J. Soc. 1461, 1494 (1987) (in study examining the effects of labeling individuals as having been previously hospitalized for mental illness, evidence indicated "that a meaningful segment of the public sees former patients as dangerous and expresses a reluctance to interact with them") *with* John Monahan, *Mental Disorder and Violent Behavior: Perceptions and Evidence*, 47 Am. Psychol. 511, 519 (1992) (concluding, upon review of relevant literature, that "[m]ental health status makes at best a trivial contribution to the overall level of violence in society").

[18] James J. Liesener & Judson Mills, *An Experimental Study of Disability Spread: Talking to an Adult in a Wheelchair Like a Child*, 29 J. Applied Soc. Psychol. 2083, 2090-92 (1999); *see also* Wm. Drew Gouvier et al., *Verbal Interactions with Individuals Presenting with and without Physical Disability* 39 Rehabilitation Psychol. 263-68 (1994) (individuals asked directions by persons with disabilities responded with simple language more appropriate to interactions with children).

many people form negative attitudes about other unrelated characteristics of persons with disabilities.[19]

2. Stigmatization

Disability also carries the taint of social stigma. As the sociologist Erving Goffman noted in his seminal work, the process of stigmatization reduces those so classified to non-human status:

> The attitudes we normals have toward a person with a stigma, and the actions we take in regard to him, are well known, since these responses are what benevolent social action is designed to soften and ameliorate. By definition, of course, we believe the person with a stigma is not quite human.[20]

Stigmatization is a common ingredient of most brands of prejudice. However, persons with disabilities have arguably been subjected to more severe historical stigmatization than other minorities.

Deviance from physical or mental norms has long been linked with deviance from moral norms. The Bible begins with the tale of Cain's being physically "marked" as punishment for killing Abel, and continues with numerous other stories associating disability and disfigurement with sin.[21]

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19 Stereotyping places persons with disabilities in a Catch-22 situation. Stereotypical attitudes lead to their being segregated from the rest of society, and that segregation, in turn, is used as confirmation of the truth of the stereotypes. "The able-bodied person sees that handicapped people rarely hold good jobs, become culture heroes, or are visible members of the community and concludes that this is 'proof' that they cannot hold their own in society." John Gliedman & William Roth, *The Unexpected Minority: Handicapped Children in America* 22 (1980).

20 Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* 5 (1963).

21 *See* Shapiro, *supra*, at 30 ("In the Old Testament, being blind, lame, deaf, crippled, sick, or diseased is a sign of having done something to incur God's disfavor. Disability is brought on by sin. In the New

Similar associations permeate secular Western literature, in which "bodily intactness and glowing health [have been] almost exclusively characteristics of the good and noble, while physical infirmities are reserved for the evil and malevolent."[22] We grow up hearing tales of disabled and wicked characters such as Rumpelstiltskin, Captain Hook, Long John Silver, or the dwarves, giants and gnomes in the Brothers Grimm fairy tales.[23] In adult literature, the common literary device of "the twisted mind in the twisted body," appears in as exalted a writer as Shakespeare, who depicted Richard III as a hunchback in order to provide a physical embodiment of his supposedly warped soul.[24] Captain Ahab's body-length scar and wooden leg serve as convenient metaphors for his traumatized and monomaniacal character in *Moby Dick*.

The 20th Century's patina of technology did not erase the linkage between sin and disability.

> Many of the ancient myths and stereotypes of people with disabilities still exist. Although few persons currently subscribe to abandoning or killing people with disabilities, many do associate disabilities with sin and the Devil. They either

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Testament, people with disabilities are cursed or possessed by evil."); Nancy Weinberg & Carol Sebian, *The Bible and Disability*, 23 Rehabilitation Counseling Bull. 273, 273-81 (1980) (reviewing associations of disability and sin in both Old and New Testaments).

[22] Shari Thurer, *Disability and Monstrosity: A Look at Literary Distortions of Handicapping Conditions*, 41 Rehabilitation Literature 12, 12 (1980).

[23] *See* Susan E. Roush, *Health Professionals as Contributors to Attitudes Toward Persons With Disabilities*, 66 Physical Therapy 1551, 1552 (1986) ("A collection of pictures taken from fairy tales and other children's stories reveals the connection between disability and evil as overwhelming.").

[24] Howard Margolis & Arthur Shapiro, *Countering Negative Images of Disability in Classical Literature*, Eng. J., Mar. 1987, at 18, 19. In fact, Richard III most likely had no disability. *Id. citing* B. Rogers, *Richard III: Shakespeare Was Quite Wrong*, 33 In Britain 31-35 (1978); *see also* Charles Ross, *Richard III* 139 (1981) ("[t]here is no reliable evidence for the popular Tudor idea that [Richard] was hunchbacked").

> consciously or subconsciously think that *disability* is a synonym of *bad*. More often than not, *able-bodied* is associated with *good*, i.e., Christ and the angels, cleanliness, and virtue.[25]

In contrast to the past when priests, rabbis, shamans and storytellers popularized the link between disability and sin, the contemporary purveyors of disability stigma are most commonly the news and entertainment media. In newspapers, magazines, books, plays, films and television programs, persons with disabilities "are often portrayed as evil, or as pitiable victims doomed to an unsatisfying life, or in an array of other roles that in the main tend to strengthen prejudices, fear, and loathing among audiences."[26]

Examples abound. In the 1960's, movie audiences watched the metal-handed Dr. No try to kill James Bond, the ideal physical specimen; those who stayed at home got to see a "hunchbacked dwarf," Migelito Loveless, try to kill dashing Jim West of *The Wild, Wild West*, because he had grown "weary of the sight of [his] strong, straight body."[27] The prosthetic-armed, wheelchair-confined Dr. Strangelove

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[25] George Henderson & Willie V. Bryan, *Psychological Aspects of Disability* 8 (1984) (emphases in original).

[26] Jack A. Nelson, *Broken Images: Portrayals of Those with Disabilities in American Media, in The Disabled, the Media, and the Information Age* 1, 1 (Jack A. Nelson ed., 1994); Paul K. Longmore, *Screening Stereotypes: Images of Disabled People*, Soc. Pol'y, Summer 1985, at 31, 33 (media depictions express "the notion that disability involves the loss of an essential part of one's humanity"); Robert Bogdan et al., *The Disabled: Media's Monster*, Soc. Pol'y, Fall 1982, at 32, 32 ("By linking ugliness and physical and mental differences with murder, terror, and violence, the media creates, at the same time as it perpetuates, society's prejudices - prejudices that result in fear of the handicapped and, ultimately, in their systematic, intentional exclusion from society."); National Mental Health Association, Stigma Matters: Assessing the Media's Impact on Public Perception of Mental Illness 24-25 (2000) (approximately half of survey respondents reported "often" seeing persons with mental illness portrayed in the media as addicts or criminals).

[27] Longmore, *supra*, at 32.

was a madman who preached lovingly about "the bomb." The "one-armed" man - not identifiable by any other attribute - was the real killer of Dr. Kimble's wife in *The Fugitive*. More recently, in the original *Star Wars* trilogy, Darth Vader, a murderous supervillain, spoke through a respirator.

As Martin Norden observed in his exhaustive study of the cinematic portrayals of persons with physical disabilities, these characterizations and others too numerous to mention "enhance[] the disabled characters' isolation and 'Otherness' by reducing them to objectifications of pity, fear, scorn, etc. - in short, objects of spectacle - . . . and [foster] a sense of isolation and self-loathing among audience members with disabilities."[28]

Nor are such attitudes limited to physical disabilities. Several studies have reported the widespread negative portrayals of persons with mental disabilities in the media.[29] A recent survey indicated that 40% of adults believe mental illness to be caused by character flaws and personality defects.[30] A slew of comedies in the past five

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[28] Martin F. Norden, *The Cinema of Isolation: A History of Physical Disability in the Movies* 2 (1994).

[29] *See, e.g.*, Otto F. Wahl & Rachel Roth, *Television Images of Mental Illness: Results of a Metropolitan Washington Media Watch*, 26 J. Broadcasting 599, 603-04 (1982) (in month of prime time television programming, majority of mentally ill characters were depicted as "aggressive," "confused," and lacking social connections; many were also portrayed as "dangerous" and "unpredictable"); George Gerbner, *Dreams That Hurt: Mental Illness in the Mass Media*, Proc. First Int'l Rosalynn Carter Symp. on Mental Health Pol'y 8, 11 (1985) (more than 70 percent of all mentally ill characters in prime-time drama and two-thirds of characters with mental illnesses on daytime soap operas are depicted as violent).

[30] Dolores Kong, *Widespread Misperception on Mental Illness*, Boston Globe, Oct. 1, 1997, at B1; Mary E. Fraser, *Educating the Public About Mental Illness: What Will it Take to Get the Job Done*, Innovations & Res., Issue 3, 1994, at 29-31 (in telephone interview of Utah residents, 71% of respondents believed that "serious mental illness is caused by emotional weakness," and 35% believed that mental illness is caused by "sinful behavior").

years have presented persons with mental disabilities as objects of ridicule.[31] Just last year, the United States Surgeon General decried the continuing stigmatization of persons with mental disabilities:

> Stigmatization of people with mental disorders has persisted throughout history. It is manifested by bias, distrust, stereotyping, fear, embarrassment, anger and/or avoidance. . . . It reduces patients' access to resources and opportunities (*e.g.*, housing, jobs) and leads to low self-esteem, isolation, and hopelessness. . . . In its most overt and egregious form, stigma results in outright discrimination and abuse. More tragically, it deprives people of their dignity and interferes with their full participation in society.[32]

The Holocaust, which began with attacks on the physically and mentally disabled,[33] provides a paradigm for the phenomenon that, when a group is perceived as morally repugnant, accursed, or subhuman, disparate treatment comes to be viewed not only as inoffensive, but as morally appropriate. Perceptions of "otherness" in this country have generated "reactions of pity, helplessness, distrust, uneasiness, and fear" in members of the non-impaired population, which, "in turn, serve as potent barriers to the participation of disabled persons in many forms of social activity."[34] For this reason, Congress justifiably concluded

[31] *See, e.g., Something About Mary* (1998) and *Scary Movie* (2000) (mental retardation); *Me, Myself and Irene* (2000) (multiple personality disorder).

[32] U.S. Public Health Service, Dep't of Health & Human Services, Mental Health: A Report of the Surgeon General 6 (1999).

[33] Marta Aussell, *Beyond Ramps: Disability at the End of the Social Contract* 20-28 (1998); Mark Mazower, *Dark Continent* 98 (1998).

[34] Advisory Comm'n on Intergovernmental Relations, Disability Rights Mandates: Federal and State Compliance with Employment Protections and Architectural Barrier Removal 20 (1989) (hereinafter "Disability Rights Mandates").

that "our society is still infected by the ancient, now almost subconscious assumption that people with disabilities are less than fully human. . . ."[35]

3. Psychological Discomfort

While stereotyping and stigmatization reflect cognitive constructs regarding persons with disabilities, a third contributor to prejudice against such persons is an affective phenomenon - the feelings of discomfort, embarrassment, or repugnance that some persons experience when interacting with persons with disabilities. Empirical studies show that unimpaired persons encountering persons with disabilities frequently experience such psychological uneasiness, which often manifests itself in restricted or inhibited behavior.[36]

Researchers have offered a number of explanations for such negative reactions to persons with disabilities. For some individuals, such reactions reflect embarrassment or awkwardness in not knowing the proper mode of social intercourse with someone with a disability.[37] For others,

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[35] Senate Comm'n on Labor and Human Resources, Report on the Americans with Disabilities Act of 1989, S. Rep. No. 101-116, at 8-9 (1989).

[36] *See, e.g.*, Robert Kleck et al., *The Effects of Physical Deviance Upon Face-To-Face Interaction*, 19 Hum. Rel. 425, 433-35 (1966) (subjects asked to interview person with apparent disability were more restricted in their communication, expressed views less representative of their actual beliefs, and terminated interviews sooner than when interviewing same person appearing without disability); Robert Kleck, *Physical Stigma and Nonverbal Cues Emitted in Face-To-Face Interaction*, 21 Hum. Rel. 19, 26-27 (1968) (subjects demonstrated inhibited physical gestures when interacting with physically disabled person); Robert Kleck, *Physical Stigma and Task Oriented Interactions*, 22 Hum. Rel. 53, 54, 59 (1969) (finding that unimpaired persons maintain greater physical distance when teaching *origami* to persons with disabilities); Fred Davis, *Deviance Disavowal: The Management of Strained Interaction by the Visibly Handicapped*, 9 Soc. Probs. 120, 123 (1961) (interactions with persons with disabilities evoke "strain and tension" on the part of persons without disability).

[37] Henderson & Bryan, *supra*, at 32 ("encountering someone who has a disability represents an unfamiliar situation for those who do not have disabilities," which can lead to "anxiety and withdrawal").

anxiety results from the perception of a person with a visible disability as "a kind of talisman, a visible incarnation of death . . . sexuality, and dependency. . . ."[38] As one author described this phenomenon:

> [U]pon encountering a physically disabled individual, the non-disabled person is reminded of his or her inevitable death, a reminder that is certain to be accompanied by a heightened state of anxiety. This anxiety reaction results in a psychological, as well as a physical, rejection of disabled individuals.[39]

In one experiment, subjects were presented with the choice of interacting with persons with values either similar to or different from their own. When presented with unimpaired individuals, the subjects chose to interact with persons having similar values; however, when the choices involved persons presented as having recently suffered a nervous breakdown, the subjects chose to interact with those persons most *unlike* themselves. The study concluded that these choices reflected the subjects' desire to alleviate anxiety about their own possible future emotional disturbance by associating such disability with individuals fundamentally different from themselves.[40]

Finally, on the most superficial level, feelings of discomfort toward persons with visible disabilities may result from nothing more than the belief, in a society that deifies physical beauty, that disability is simply "displeasing

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[38] Gliedman & Roth, *supra*, at 374.

[39] Hanoch Livneh, *Death Attitudes and Their Relationship to Perceptions of Physically Disabled Persons*, J. Rehabilitation, Jan.-Mar. 1985, at 38, at 38, 38; Jo E. Endres, *Fear of Death and Attitudinal Dispositions Toward Physical Disability*, 39 Dissertation Abstracts Int'l 7161A (1979) (study indicating that negative attitudes toward disability are positively correlated to fear of death).

[40] David W. Novak & Melvin J. Lerner, *Rejection as a Consequence of Perceived Similarity*, 9 J. Personality & Soc. Psychol. 147, 151 (1968).

or distasteful."[41]

Importantly, however, psychological discomfort is by no means limited to persons with visible physical disabilities. To the contrary, surveys show that the public feels *more* uncomfortable towards persons with mental illness than towards persons with other types of disability.[42]

Whatever the root cause of discomfort in unimpaired persons when interacting with a person with a disability, those feelings can, consciously or unconsciously, lead to segregation and isolation. A carefully-designed sociological study indicated that, when unimpaired people can disguise their motives, they tend to avoid interactions with persons with disabilities. Subjects were given the choice of viewing one of two similarly-themed films on a television monitor. Choosing one film required the subject to sit next to a person with a visible physical disability; if the subject chose the other film, he or she would sit next to a person with no apparent disability. The subjects routinely selected the film that did not require sitting next to the person with a disability.[43] These results vividly underscore how the psychological distress some people experience when interacting with persons with disabilities can limit the latters' ability to be integrated members of society.

4. Paternalization and Pity

A final basis of prejudice is one that at first appears benign. Many who view people with disabilities as neither incompetent, evil, subhuman, unnerving nor repugnant nonetheless harbor perceptions about them that result in

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[41] Harlan Hahn, *Paternalism and Public Policy*, Soc'y, Mar.-Apr. 1983, at 36, 44; Safilios-Rothschild, *supra*, at 10-11 ("The nondisabled feel repulsion and disgust for the disabled - in different degrees of intensity and about different types of disability - and then usually guilt because of these 'unacceptable' feelings.").

[42] *See, e.g.*, National Organization on Disability, Louis Harris & Assoc., Public Attitudes Toward People with Disabilities 17, 18, 31 (1991).

[43] Melvin L. Snyder et al., *Avoidance of the Handicapped: An Attributional Ambiguity Analysis*, 37 J. Personality & Soc. Psychol. 2297, 2303-04 (1979).

diminished opportunity or segregation. These are people who believe that the world is simply too much of a struggle for persons with disabilities, and, therefore, that they should be protected from its vicissitudes. Illustrations of this principle are the phenomena of "poster children" and telethons.

Although ostensibly less invidious than prejudice based upon hostile animus, paternalistic attitudes also fence persons with disabilities out of mainstream society.

> Paternalism enables the dominant elements of a society to express profound and sincere sympathy for the members of a minority group while, at the same time, keeping them in a position of social and economic subordination. It has allowed the nondisabled to act as the protectors, guides, leaders, role-models, and intermediaries for disabled individuals who, like children, are often assumed to be helpless, dependent, asexual, economically unproductive, physically limited, emotionally immature, and acceptable only when they are unobtrusive.[44]

The "flip side" of the pitiable poster child is the "supercrip," the heroic overachiever who manages to perform strenuous physical acts notwithstanding his or her disability.[45] The all-too-frequent perception by many individuals that persons with disabilities must fall into one of these two camps, superhero or wretch, implies "that a disabled person is presumed deserving of pity - instead of

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[44] Harlan Hahn, *Disability and Rehabilitation Policy: Is Paternalistic Neglect Really Benign?* 42 Pub. Admin. Rev. 385, 388 (1982).

[45] Shapiro, *supra*, at 16. Well-known examples include Terry Fox, a cancer survivor whose run across Canada despite having an artificial leg prompted a television movie, one-armed baseball pitcher Jim Abbott, *id.* at 17-19, and two-time Tour de France champion and cancer survivor Lance Armstrong.

respect - until he or she proves capable of overcoming a physical or mental limitation through extraordinary feats."[46] Burdening disabled people with such unrealistic expectations before according them the basic respect routinely granted unimpaired people is grossly unfair, for the simple reason that most persons with disabilities, like most persons without disabilities, "are trying simply to lead normal lives, not inspire anyone," [47] and deserve to be allowed to do so without feeling like failures.

B. The Pernicious Nature of Prejudice Against Persons With Disabilities

As the foregoing suggests, the roots of prejudice towards persons with disabilities are varied, pervasive, and deeply engrained. Such prejudices date at least as far back as Biblical associations of disability with sin and punishment, and span virtually all industrial cultures and nationalities.[48]

Notwithstanding this long and widespread history of mistreatment, however, the outrage that accompanies prejudice against racial, ethnic and religious minorities has rarely been exhibited with regard to prejudice against the disabled population. This lack of response has been explained as a by-product of the paternalistic/stereotyped notion that persons with disabilities, unlike other minorities, "deserve" to be treated unequally.

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[46] *Id.* at 16.

[47] *Id.*

[48] *See, e.g.*, Robert Straus, *Social Change and the Rehabilitation Concept, in Sociology and Rehabilitation* 1, 3 (Marvin B. Sussman ed., 1965) (noting "variety of harsh and hideous treatments" to which "persons disabled by problems for which little could be done or which appeared only remotely related to the broader social need" have been subjected throughout Western history); *cf. School Board of Nassau County v. Arline*, 480 U.S. 273, 284 n.12 (1987) (hereinafter "*Arline*") ("[t]he isolation of the chronically ill and of those perceived to be ill or contagious appears across cultures and centuries, as does the development of complex and often pernicious mythologies about the nature, cause, and transmission of illness").

> [T]he lay culture's notion of tolerance toward handicapped people takes for granted the reality of the "self-evident" inferiority of the handicapped person. Instead of challenging this vulgar prejudice, it makes its analytical point of departure the negative feelings that our naïve perceptions of handicapped people often provoke in us. Yes, we say, handicapped people are indeed as helpless and incompetent as we believe them to be.[49]

However, the assumption that unequal treatment of persons with disabilities is based upon legitimate differences is a pernicious one. "[A] belief in the social incapacity of the handicapped" often "disguises ignorance or bigotry behind what we 'see' to be an obvious biological fact."[50] This risk is particularly significant because of the ease with which prejudiced attitudes against persons with disabilities can lie concealed behind a rational facade.[51]

The difficulty of detecting irrational prejudice is exacerbated by the fact that most people do not wish to acknowledge having an aversion to persons with disabilities. Several studies have noted a marked ambivalence in the response of unimpaired persons towards those with disabilities. Whereas "public, verbalized attitudes" are often favorable, "deeper, unverbalized feelings" are often rejecting.[52] A Canadian study, for

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[49] Gliedman & Roth, *supra*, at 32.

[50] *Id.* at 23.

[51] *See, e.g.*, Gary E. Holmes & Ronald H. Karst, *The Institutionalization of Disability Myths: Impact on Vocational Rehabilitation Services*, J. Rehabilitation, Jan.-Mar. 1990, at 20, 23 ("When a counselor makes a decision about the client's case solely to enforce conformity, the casefile may reflect nothing extraordinary. Counselors may unknowingly justify their stereotype-thinking and prejudicial behaviors in case records by using professional-sounding jargon.").

[52] Irwin Katz et al., *Attitudinal Ambivalence and Behavior Toward People with Disabilities, in Attitudes Toward Persons with Disabilities* 47, 48 (Harold E. Yuker ed., 1988). Thus, individuals' verbal impressions about persons

example, found that, although two-thirds of employers expressed willingness in principle to hire persons with developmental disabilities, at the conclusion of the survey only 26% of them would agree to receive job inquiries from such persons.[53] Such findings suggest that many people who disclaim any disability prejudice may nonetheless react in a prejudiced and exclusionary manner in real-life interactions with persons with disabilities.

C. The Effects Of Prejudice

Real-life links between irrational prejudices and unequal treatment of persons with disabilities manifest themselves repeatedly in three of the principal areas targeted by the ADA in which the states are heavily involved: employment; health services; and education.

1. Employment

The experience of persons with disabilities in the work force provides compelling evidence of the negative impact of societal prejudices. In a recent Harris Poll, only 56% of persons with disabilities who were able to work were employed, in contrast to 81% of the rest of the population.[54]

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with disabilities are frequently positive at the same time that their nonverbal physiological responses (such as body language, gestures, and physical distance) are negative. Harold H. Kelley et al., *Some Implications of Social Psychological Theory for Research on the Handicapped, in Psychological Research and Rehabilitation* 172, 186-87 (Lloyd H. Lofquist ed., 1960) (unimpaired persons experience ambivalence in social encounters with persons with disabilities, resulting in formal, stilted behavior intended to conceal negative feelings that may cause embarrassment).

[53] David Gibson & Gerrit Groeneweg, *Employer Receptivity to the Developmentally Handicapped: When "Yes" Means "No,"* Canada's Mental Health, June 1986, at 12, 15.

[54] Louis Harris & Assoc., The 2000 N.O.D./Harris Survey of Americans with Disabilities, Executive Summary, ¶¶ 5 and 6 (visited Aug. 9, 2000) (http://www.nod.org/hs2000.html) (hereinafter "2000 Harris Poll"). Importantly, however, these numbers reflect substantial improvement since enactment of the ADA. In 1986, a similar Harris poll reported that

The report that proposed enactment of the ADA concluded that prominent reasons for high unemployment and underemployment among persons with disabilities included "societal attitudes which cause employers to discriminate against persons with disabilities."[55] That conclusion was fully supported by empirical evidence.

For more than fifty years, the reported experiences of those who have employed individuals with disabilities have been almost overwhelmingly positive. In 1948, the Bureau of Labor Statistics examined the employment records of 11,000 physically disabled and 18,000 matched non-disabled workers in manufacturing plants throughout the country.[56] This study found that, as a group, persons with disabilities were as efficient as those without disabilities and had identical safety records. Subsequent studies have been similarly positive.[57]

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only 46% of those persons with disabilities who were able to work were employed. *Id.*

[55] National Council on the Handicapped, Toward Independence, A Report to the President and to the Congress of the United States 22 (1986).

[56] U.S. Dep't of Labor, Bull. No. 923, The Performance of Physically Impaired Workers in Manufacturing Industries 3 (1948).

[57] *See, e.g.,* U.S. Dep't of Labor, Bull. No. 234, Workmen's Compensation and the Physically Handicapped Worker 5 (1961) (concluding, upon review of employer studies from 1932 through 1961, that a qualified and properly placed worker with a physical disability is "a good worker," "reliable," "productiv[e]", and "careful"); U.S. Civil Service Comm'n, A Chain of Cooperation: Severely Physically Handicapped Employees in the Federal Service 3 (1976) (study of appointments of severely handicapped workers to Federal agency jobs from 1964 to 1975 concluded that their "work record is excellent."); George Howard, *The Ex-Mental Patient as an Employee: An On-the-Job Evaluation*, 45 Am. J. Orthopsychiatry 479, 482-483 (1975) (employees with history of psychiatric disabilities reported to have same job performance as other employees); Gopal C. Pati, *Countdown on Hiring the Handicapped*, 57 Personnel J. 144, 146 (1978) (1976-77 study of 8,000 handicapped people employed by 16 major corporations showed that they had lower absentee rates, equivalent or superior job performance, no impact on insurance costs, lower turnover, and required minimal to no accommodations); Henry A. Tombari, *Lending a Hand to the Handicapped: A Primer for Business*, Advanced Mgmt.

Given this uniformly positive work history, various governmental and research organizations have concluded that prejudice is the major reason that otherwise qualified persons with disabilities are underemployed. In 1975, the Urban Institute observed that

> [v]irtually all the studies on employer attitudes have found that large proportions of employers disfavor hiring disabled people. There are strong indications that these attitudes are in large part based on nonrational, negative feelings – prejudice, in other words. . . . [58]

Fourteen years later, on the eve of the ADA's passage, state advocates and public officials agreed

> [upon] the significant and often negative impact of public and employer attitudes toward persons with disabilities. . . . . [¶][These] attitudes persist, despite evidence that handicapped workers are productive, countless experiences with persons with disabilities who have made successful adjustments to work settings, and studies

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J., Autumn 1979, at 44, 48-49 (study of 100 corporations found that disabled workers had lower than average productivity in only 10% of the cases, higher than average absenteeism in fewer than 5% of the cases, and lower turnover rates in 83% of the cases); Wendy S. Parent & Jane M. Everson, *Competencies of Disabled Workers in Industry: A Review of Business Literature*, J. Rehabilitation, Oct.-Dec. 1986, at 16, 16-19 (reviewing 13 articles reporting employers' positive experiences in hiring persons with disabilities); Louis Harris & Assocs., The ICD Survey II: Employing Disabled Americans (1987) (75% of managers polled give disabled employees a good or excellent rating on overall job performance).

Nor do the facts bear out the common complaint that the hiring of persons with disabilities is unduly costly to the employer. In the 1987 Harris Poll, 75% of managers who had employed persons with disabilities said that the average cost of hiring them was about the same as that of hiring non-disabled persons. *Id.*

[58] Urban Institute, Report of the Comprehensive Service Needs Study 324 (1975).

showing that most work place accommodations involve little cost. [59]

Indeed, at precisely the time Congress was reaching the conclusion that societal discrimination had adversely affected the employment of persons with disabilities, a commission examining this issue in the nation's most populous state made precisely the same finding:

> [T]he experience of people with disabilities who serve on the Commission, testimony, and research studies document discrimination as the major cause of unemployment among people with disabilities. [ ]. Many employers erroneously assume that providing a reasonable accommodation for a person with a disability would be complex and costly, when it may be as simple as providing a stool at a workbench, or placing a ramp over a stair. Surveys and testimony indicate that many employers are victims of myths about the competency and reliability of people with disabilities.[60]

In sum, the totality of the available data, going back at least 40 years, indicates that engrained and often hidden societal prejudices against persons with disabilities have a material adverse impact upon the ability of these persons to participate in the work force according to their true abilities.

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[59] Disability Rights Mandates, *supra*, at 73.

[60] California Dep't of Justice, Attorney General's Comm'n on Disability, Final Report 128 (1989) (hereinafter "California Report"). Again, the foregoing findings are not limited to physical disabilities. Christopher I. Stone & Birgit Sawatzki, *Hiring Bias and the Disabled Interviewee: Effects of Manipulating Work History and Disability Information of the Disabled Job Applicant*, 16 J. Vocational Behav. 96, 101 (1980) (job applicants presented as having had history of psychological disability – specifically, a nervous breakdown – found to be much less likely to be hired than applicants without such history, despite identical qualifications and interview performance).

2. Health Services

Prejudices against persons with disabilities manifest themselves in discriminatory behavior precisely in an area where people with disabilities may most need services – health care. Researchers have reported prejudice against people with disabilities in the health care community.[61] These negative attitudes in turn lead to adverse decisions about what, if any, health care services persons with disabilities will receive.

Most people with disabilities are satisfied with the quality of their lives.[62] Moreover, after a period of adjustment, life satisfaction of persons with disabilities is not significantly related to the degree of physical impairment.[63] Health professionals, however, continue to

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[61] *See* Carol J. Gill, *Health Professionals, Disability, and Assisted Suicide: An Examination of Relevant Empirical Evidence*, J. Psychol., Pub. Pol'y & L. (forthcoming 2000) (noting that "studies consistently demonstrate that disability attitudes of health professionals are as negative and sometimes more negative than public attitudes"); Gliedman & Roth, *supra*, at 17 ("despite their condemnations of prejudice toward the disabled, [the models of health care professionals] share far more with longstanding myths and stereotypes about handicap than has generally been recognized."); Lindsay Gething, *Judgments by Health Professionals of Personal Characteristics of People with a Visible Physical Disability*, 34 Soc. Sci. & Med. 809, 812-14 (1992) (health care professionals shown a videotaped employment interview of interviewee depicted in a wheelchair devalued interviewee in characteristics unrelated to the disability).

[62] M. G. Eisenberg & C.C. Saltz, *Quality of Life Among Spinal Cord Injured Persons: Long Term Rehabilitation Outcomes*, 29 Paraplegia 514, 517-18 (1991) (citing various studies).

[63] Gill, *supra* (citing studies); Nancy Weinberg, *Another Perspective: Attitudes of Persons with Disabilities, in Attitudes Toward Persons with Disabilities* 141, 142-43 (Harold E Yuker ed., 1988) (in study of 88 persons with various physical disabilities, including muscular dystrophy, cerebral palsy, and multiple sclerosis, most viewed it as merely a fact of life, or at most an inconvenience; fewer than 20% viewed it as a cause of frustration, a terrible thing, or the worst thing that ever happened to them); *id.* at 143-53 (subsequent study showing that a significant percentage of persons with physical disabilities would not choose to have corrective surgery even if success were assured and there were no risks attached).

make decisions based upon their assumption that persons with disabilities have a poor quality of life. Numerous studies find that health care professionals routinely undervalue the life satisfaction of persons with disabilities.[64] Professionals who believe that they personally would not wish to live with a particular disability are far less likely to support life-saving treatment for a patient with such a disability. Studies performed from 1977 through 1994 have shown that: emergency care professionals who devalue life with high-level spinal cord injuries are far more likely to withhold life-saving surgeries for such patients; healthcare providers often oppose life-sustaining treatment for persons with high-level quadriplegia; 41% of Muscular Dystrophy Association clinic directors would discourage ventilator use by patients facing respiratory failure; and two-thirds of pediatric surgeons would not support life-sustaining surgery for a child with Down's syndrome.[65]

Pessimistic views of the quality of life with a disability are even used to justify euthanasia. Thus, in 1975, a proponent of withholding life-saving health services from infants born with disabilities employed precisely the rhetoric discussed above - the stigmatizing notion of the "otherness" of persons with disabilities - to justify his argument: "[C]onception and birth by human parents does

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[64] *See* Gill, *supra* (citing studies of overly pessimistic attitudes of health professionals toward quality of life of spinal cord injury patients, persons with quadriplegia, ventilator-assisted polio survivors, elderly patients with chronic conditions, laryngectomy patients, persons with spina bifida, and children with developmental disabilities).

[65] *Id.*; *see also* Glenn G. Affleck, *Physicians' Attitudes Toward Discretionary Medical Treatment of Down's Syndrome Infants*, 18 Mental Retardation 79, 80 (1980) (noting, upon review of four surveys on physician attitudes, that "a majority of physicians sampled prefer that at least some infants with Down's Syndrome not be treated 'aggressively' to correct life-threatening conditions that in otherwise normal infants unquestionably would prompt intervention"); Mark L. Wolraich et al., *Pediatricans' Perceptions of Mentally Retarded Individuals*, 80 Pediatrics 643, 643 (1987) ("many physicians have an unduly pessimistic impression of the potential of handicapped infants").

not automatically endow one with personhood. . . . Some other characteristic or feature must be present in the organism for personhood to vest, and this the defective infant arguably lacks."[66] Similar prejudices deny the basic humanity of people with severe mental retardation.[67] As recently as 1985, a book on medical ethics stated matter-of-factly that "some infants with severe disabilities should be killed."[68]

The negative views of the health care community against persons with disabilities go beyond the theoretical, with deadly, real-world effects. In the late 1980's, doctors and a state court judge, citing poor quality of life, supported and agreed to 34-year old quadriplegic Larry James McAfee's request that he be allowed to die, even though McAfee could function quite capably with the use of a respirator. In fact, McAfee's main problem was not his disability, but depression from constantly being shunted back and forth from one inappropriate state health care facility to another. When finally placed in a proper environment, McAfee reported himself happy to be alive.[69]

Others have not been as fortunate. In the early 1970's and throughout the 1980's, thousands of disabled newborns were denied lifesaving medical treatment every

[66] John A. Robertson, *Involuntary Euthanasia of Defective Newborns: A Legal Analysis*, 27 Stan. L. Rev. 213, 246-47 (1975).

[67] Peter Paul Rickham, *The Ethics of Surgery in Newborn Infants*, 8 Clinical Pediatrics 251, 251 (1969) ("One might ask whether class five [profound mental retardation] can be regarded as being 'humanly alive' in the sense in which we usually understand these words"); Joseph Fletcher, *Indicators of Humanhood: A Tentative Profile of Man*, Hastings Center Rep., Nov. 1972, at 1, 1 ("Any individual of the species *homo sapiens* who falls below the I.Q. 40-mark in standard Stanford-Binet test . . . is questionably a person; below the 20-mark, not a person"); Bernard Bard & Joseph Fletcher, *The Right to Die*, The Atlantic, Apr. 1968, at 59, 64 (suggesting that a parent withholding medical care from a child with Down's syndrome should feel no guilt, because a "Down's is not a person").

[68] Helga Kuhse & Peter Singer, *preface* to *Should the Baby Live? The Problem of Handicapped Infants* (Peter Singer ed., 1985).

[69] Shapiro, *supra*, at 258-288.

year.[70] In 1983, the Oklahoma Health Sciences Center even adopted a selection process for deciding whether to treat infants with spina bifida that used a mathematical formula to measure quality of life.[71] Because untreated infants with spina bifida typically expire within a few months of birth, the decision to withhold treatment was effectively a death sentence.

In short, in health care as in employment, misconceptions about the value of life with a disability have led to invidious discriminatory behavior that severely limits the opportunities - including, on occasion, the opportunity to live at all - of persons with disabilities.

3. Education

Irrational prejudice also has an adverse impact upon the education of children with disabilities. A key aspect of the education of students with disabilities is the willingness of states to provide an education that will equip them to participate in all aspects of society. Unfortunately, educators systemically tend to underestimate the potential of students with disabilities. The consequence has been the closure of the most important avenue for liberating people with disabilities.

Researchers have found that "practicing teachers demonstrate[] significantly more negative attitudes toward various groups of exceptional children (e.g., physically handicapped children, mentally retarded children, learning

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[70] Accommodating the Spectrum, *supra*, at 35, and newspaper and periodical articles cited therein; John A. Robertson, *Legal Aspects of Withholding Medical Treatment from Handicapped Children, in Legal And Ethical Aspects of Treating Critically and Terminally Ill Patients* 213 (A. Edward Doudera & J. Douglas Peters eds., 1982) ("[w]ithholding necessary medical care from defective newborns in order to cause their death is a common practice in many medical centers across the United States").

[71] Richard H. Gross et al., *Early Management and Decision Making for the Treatment of Myelomeningocele*, 72 Pediatrics 450, 456 (1983) (*citing* A. Shaw, *Defining the Quality of Life*, Hastings Center Rep., 1977).

disabled children, and emotionally disturbed children) than toward normal children."[72] In the eyes of educators, "[t]he label of disability often is associated with lower expectation or perception that the students' performance will be diminished."[73]

Given such attitudes, it is hardly surprising that people with disabilities report being consistently steered into academic programs that neither conform to their demonstrated abilities nor prepare them for employment.[74] Nor is it surprising that their educational attainment lags behind that of the rest of the population. Persons with disabilities are much less likely to complete high school or college than persons without disabilities.[75]

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[72] Thomas S. Parish et al., *Normal and Exceptional Children's Attitudes Toward Themselves and One Another*, 104 J. Psychol. 249, 249 (1980).

[73] Sharon Field et al., *Effects of Disability Labels on Teachers' Perceptions of Students' Self-Determination*, 75 Perceptual & Motor Skills 931, 931 (1992), *citing* R. Taylor et al., *The Effects of Labels and Assigned Attributes on Teacher Perceptions of Academic and Social Behavior*, 18 Educ. & Training Mentally Retarded 45 (1983); *see also* Herbert Grossman, *Special Education in a Diverse Society: Improving Services for Minority and Working-Class Students*, Preventing School Failure, Fall 1991, at 19, 21 ("Educators judge the work and performance of [disabled] students to be lower or less adequate than it actually is and their intellectual potential and social skills to be lower than objective data would suggest.").

[74] *See, e.g.*, Marilynn J. Phillips, *Damaged Goods: Oral Narratives of the Experience of Disability in American Culture*, 30 Soc. Sci. & Med. 849, 854-55 (1990); *see also* Kim C. Oppenheimer & Max D. Miller, *Stereotypic Views of Medical Educators Towards Students with a History of Psychological Counseling*, 35 J. Counseling Psychol. 311, 312 (1988) (medical school residency program applicants with history of psychological counseling less likely to be invited for interview or accepted into program).

[75] *See* 2000 Harris Poll at ¶ 10 (percentage of persons with disabilities who fail to complete high school is more than twice that of rest of population; 12% of persons with disabilities receive college degrees, compared to 23% of the rest of the population); *see also* Thomas M. Shea & Anne M. Bauer, *Learners with Disabilities: A Social Systems Perspective of Special Education* 20 (Sue Pulvermacher-Alt et al. eds., 1994) (persons with disabilities have far less education than other Americans). Again, however, there has been a marked improvement in the years since enactment of the ADA. In 1986,

Two stories perhaps best illuminate the negative impact of disability prejudice in public education. In the hearings leading up to the enactment of the Rehabilitation Act, Representative Vanik cited a case where a court found that an academically competitive child with cerebral palsy should be excluded from public school because his teacher claimed his physical appearance "produced a nauseating effect" on his classmates.[76]

A second commentator recounts the story of a post-polio quadriplegic enrolling at the prestigious University of California at Berkeley - a renowned state university. The California Department of Rehabilitation refused to pay for the same four-year education for a quadriplegic student that it did for less severely disabled students, because the expenditure of such sums "would be wasted since it was 'infeasible' that he could ever work." Then, when the student lobbied Berkeley directly, he was informed very matter-of-factly by one dean that they had "tried cripples before and it didn't work."[77]

Incidents like these vividly demonstrate that prejudice has negatively affected the educational opportunities of persons with disabilities, just as it has negatively affected their employment and health care opportunities.

IV.
CONCLUSION

The ADA is predicated on the fundamental notion that persons with disabilities are entitled to be meaningful participants in society, restricted only by the true (as opposed to presumed) limitations imposed by their specific disabilities. This was a step that previous legislation had not taken. As late as 1989, for example, California's

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only 61% of persons with disabilities had graduated from high school, compared to nearly 80% today. 2000 Harris Poll, *supra*, at ¶ 12.

[76] 117 Cong. Rec., 45974 (1971) (*cited in Arline*, 480 U.S. at 282 n.9).

[77] Shapiro, *supra*, at 44-45.

Commission on Disability had acknowledged that California's own

> agencies continue to use unfair social policies premised on paternalism and discriminatory attitudes which effectively exclude people with disabilities from full participation in community life. ... In their fear of disability, their devaluation of the lives of people with disabilities, and in their unwillingness to share resources equitably, they have shunned their responsibility to guarantee equal opportunity for all.[78]

In 1987, this Court recognized the truth of Congress's determination that "society's accumulated myths and fears about disability are as handicapping as are the physical limitations that flow from actual impairment."[79] That observation is no less apt today. Society's deep-seated and hidden "myths and fears" about disability continue to have significant real-world consequences for the lives of people with disabilities. By admitting persons with disabilities into the mainstream of American society, the ADA represents major progress toward reversing

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[78] California Report, *supra*, at 57; *see also* Richard H. Scotch, From Good Will to Civil Rights: Transforming Federal Disability Policy, 9-10 (1984) ("Most [federal] programs [prior to the ADA] perpetuated an image of disabled people as socially incomplete or damaged as a result of their physical or mental impairments. Seen as incapable of self-sufficiency, they were to be pitied, and stigmatized; both help and segregation were deemed appropriate. [ ] Such views were deeply entrenched in American society.").

[79] *Arline*, *supra*, 480 U.S. at 284; *see also Report of a United Nations Expert Group Meeting on Barrier Free Design*, 26 Int'l Rehabilitation Rev. 3 (1975) ("[m]ore people are forced into limited lives and made to suffer by ... man-made obstacles than by any specific physical or mental disability"); Disability Rights Mandates, *supra*, at 20 ("Probably the most significant barriers faced by persons with disabilities relate to the attitudes, predispositions, and behaviors of nondisabled persons. Such attitudes range from negative views of disability to discomfort in associating with people who experience some form of disability.").

prejudiced attitudes and improving the environment in which persons with disabilities live.[80]

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[80] Allowing persons with disabilities to be full participants in American society is necessary to end the Catch-22 of disability discrimination. *See* n. 19, *supra*. Numerous studies indicate that mainstream contact, in a context of equality rather than subordination, helps "disconfirm stereotypes" about persons with disabilities. Harold E. Yuker, *Variables that Influence Attitudes Toward People with Disabilities: Conclusions from the Data, in Psychosocial Perspectives on Disability*, 3, 6-7 (Dana S. Dunn ed., 1994); *see, e.g.*, Frank Bowe, *Handicapping America: Barriers to Disabled People* 112 (1978) ("People who have had extensive contact with disabled people tend to regard them more favorably . . . than do people with less contact . . . ."). Indeed, if interaction occurs early in life, it can even prevent prejudicial attitudes from forming in the first place. California Report, *supra*, at 89 (day-to-day contact in "[i]ntegrated school settings may enable non-disabled children to have normal contact with their peers with disabilities and prevent their becoming victims of myths and stereotypes about people with disabilities").